

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual offeror proposals. Only finalist offerors will receive points for their oral presentation and demonstration.

<u>Specification</u>	<u>Points</u>
1. Product and Services Delivery Overview	150
2. Reporting	25
3. Electronic Commerce	50
4. Breadth of Offering	175
5. Primary Account Representative	25
6. References	50
7. Roll-out and Support Plan	125
8. Pricing Level and Guarantee	50
9. Oral Presentation and Demonstration	50
10. Equipment and Services Schedule	0
11. Revised Price Agreement on Diskette	0
12. Cost	<u>300</u>
Total	1,000

### B. EVALUATION FACTORS

Points will be awarded on the basis of the following evaluation factors:

#### 1. Products and Services Delivery Overview

The Offeror's response will be evaluated and points awarded based upon the following criteria:

- a) Geographic Coverage - Up to a maximum of 50 points will be awarded based upon the percentage of WSCA states covered for products and services.
- b) Technical/Marketing - Up to a maximum of 40 points will be awarded based upon an assessment of the adequacy of the number and location of technical and marketing personnel provided in the coverage area.
- c) Problem Resolution - Up to a maximum of 20 points will be awarded based upon an assessment of the adequacy of the problem escalation procedures.
- d) Customer Satisfaction - Up to a maximum of 20 points will be awarded based upon the user survey results or other comparable statistics submitted.

- e) Value Added Services - Additional consideration will be given up to a maximum of 20 points to offerors who can provide value added technical services including installation, training or directly related optional services based upon the size of the geographic coverage area.

2. Reporting

Up to a maximum of 25 points will be awarded based upon the type of quality of the reporting available. Offerors who propose and provide Internet based custom interactive reporting will receive the maximum points.

3. Electronic Commerce

Up to a maximum of 50 points will be awarded based upon the offeror's firm commitment or demonstrated ability to provide Internet-based electronic commerce support for configuration assistance, purchase order tracking, procuring agency reporting, electronic receipt and processing of purchase orders or other relevant capability. Proposals that offer only vague commitments to provide the requested capabilities will receive no points.

4. Breadth of Offering

Up to a maximum of 75 points will be awarded based upon the breadth of the proposed product line including the configuration flexibility and performance of the primary processing units.

Up to a maximum of 25points will be awarded based upon the breadth of the proposed product line including the configuration flexibility and performance of the peripherals.

Up to a maximum of 25points will be awarded based upon the number and type of operating systems that are proposed for the primary processing units.

Up to a maximum of 25points will be awarded based upon the number and type of general-purpose software products that are proposed.

Up to a maximum of 25 points will be awarded based upon the number and type of technical support services that are proposed.

5. Primary Account Representative

Up to a maximum of 25 points will be awarded based upon an evaluation of the knowledge and experience of proposed primary account representative and the marketing supervisor as documented in the resumes submitted in the proposal.

6. References

Up to a maximum of 50 points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the offeror's products and services, the delivery of products and services, responsiveness to problems and complaints and the level of satisfaction with the offerors' overall performance.

7. Rollout and Marketing Plan

Up to a maximum of 75 points will be awarded based upon the quality, efficiency, and thoroughness of the rollout plan and materials submitted as part of the offeror's proposal.

Up to a maximum of 50 points will be awarded based upon the quality of materials, approach and contractor's commitment to provide on going marketing support after the initial rollout.

8. Pricing Level and Guarantee

Up to a maximum of 25 points will be awarded based upon the aggressiveness of the offerors' base line, initial, pricing compared to pricing that selected WSCA states are currently paying for identical or similar products.

Up to a maximum of 25 points will be awarded based upon the offerors' willingness to guarantee volume based price discounts that will result in prices below the base line, initial pricing.

9. Oral Presentation and Demonstration

Finalist offerors will be awarded up to 50 points for their oral presentation based upon clarity of presentation, ability to answer both technical and administrative questions as well as the understanding of and commitment to address the needs of the WSCA member states. Proposed Internet-base reporting and electronic commerce capabilities will be evaluated based on ease and use and technical merit.

12. Cost

Total cost will be calculated by adding the proposed cost for the server (Pricing Configuration One) to the result of ten (10) times the proposed cost for desktop computer (Pricing Configuration Two) plus the proposed cost of the laptop computer (Pricing Configuration Three). If an offeror does not propose a server or laptop computer, the average cost proposed by the other offerors for those units will be added to the offeror's result of ten (10) times the proposed cost of the desktop computer to arrive at a uniform cost for the award of points for this factor.

The evaluation of each offeror's cost proposal will be conducted using the following formula:

$$\frac{\text{Lowest Responsive Offer Total Cost}}{\text{This Offeror's Total Cost}} \times 300 = \text{Award Points}$$

#### C. EVALUATION PROCESS

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II, Paragraph B.7.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations and demonstration will be added to the previously assigned points to attain final scores. The responsible offeror(s) whose proposal is most advantageous to the NMSPA, taking into consideration the evaluation factors in Section V, will be recommended for award to the State Purchasing Agent as specified in Section II, Paragraph B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score. This procurement is expected to result in a multiple source award

**APPENDIX A**  
**Acknowledgement of Receipt Form**

## **ACKNOWLEDGEMENT OF RECEIPT FORM**

### **REQUESTS FOR PROPOSALS**

#### **Manufacturer Supplied Computer Equipment with Peripherals, Software, Equipment Maintenance and Support Services**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with appendix D.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on June 4, 1999. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Procurement Manager's written responses to those questions as well as RFP amendments, if any are issued.

**FIRM:** \_\_\_\_\_

**REPRESENTED BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**PHONE NO.:** \_\_\_\_\_ **FAX NO.:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIPCODE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Firm does/does not (circle one) intend to respond to this Request for Proposals.

The following name and address must be used for all correspondence related to the Request for Proposals.

Terry S. Davenport  
Purchasing Division  
P. O. Drawer 26110  
Santa Fe, New Mexico 87502-0110  
**Phone: (505) 827-0493 Fax: (505) 827-2484**  
**Tdavenport@state.nm.us**

**APPENDIX B**  
**Price Agreement Terms and Conditions**

**WESTERN STATES CONTRACTING ALLIANCE**  
**COMPUTERS DIRECT**  
**MASTER PRICE AGREEMENT**  
**9X-00151**

This Agreement is made and entered into by \_\_\_\_\_  
("contractor") and the New Mexico State Purchasing Agent ("NMSPA") on behalf of the State of  
New Mexico and the participating members of the Western States Contracting Alliance.

The parties agree as follows:

1. Definitions

"Agreement Administrator" refers to the individual appointed by the NMSPA to administer this agreement on behalf of the State of New Mexico, the participating WSCA members and other authorized purchasers.

"Announced Promotion Prices" are prices offered nationally to specific categories of customers (including WSCA Participants) for defined time periods under defined Terms and Conditions.

**(Delete the following definition if not applicable)**

"Certified Education Partner" (CEPs) are contractor-certified networking specialists, who provide expert advice and guidance to customize solutions for specific educational technology needs, installation, and local service and support.

"Documentation" refers to manuals, handbooks, and other publications and listed in the ESS or supplied with products listed in the ESS or supplied in connection with services.

"Educational Discount Price" means the price offered in a nationally announced promotion , which is limited to educational customers only.

"Equipment" refers to desktop and laptop computers, servers, workstations, printers, displays, peripherals and LAN and hardware components and spare parts listed in the contractor's ESS.

"Equipment and Services Schedule" ("ESS") refers to a complete list, grouped by major product categories, of the equipment, software, services, media and documentation available for purchase by procuring agencies. The ESS contains an item number, item description and the maximum price for each product or service.

"Equipment and Service Schedule (ESS) prices" mean the prices offered to WSCA



members exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices.

“General Price Reduction Price” means the price offered to WSCA members under the WSCA agreement at prices lower than ESS pricing. Selection and pricing of General Price Reduction items shall be by mutual agreement of the parties. Either party can propose additions or deletions to the listing of General Price Reduction Items.

“General purpose” includes the following classes of software: operating systems, report generators, spreadsheets, text and test processing, workgroup management, database, project management, messaging and electronic mail, graphics construction and presentation, publishing, data communications, statistical and/or analysis, imaging, compilers and interrupters, utilities, and programmer productivity tools. Educational software designed for K-12 public schools and/or universities is included.

“Large Order Negotiated Price” means the price offered to specific WSCA members or classes of WSCA members under defined additional Terms and Conditions. Selection and pricing of Large Order Negotiated Prices shall be by mutual agreement of the parties. Large Order Negotiated Prices shall apply only to those items which meet the applicable additional Terms and Conditions (e.g., order quantity, time limitation, product configuration) negotiated by the parties.

“Local-Area-Network” (“LAN”) refers to a high-speed communications system optimized for connecting information-processing equipment within a building or group of buildings. The communications devices that are required to transmit data between buildings via a public or private network are included.

“Participating Addendum” means a written statement of agreement signed by the appropriate participating entity authority and contractor indicating the entities’ willingness to purchase and the contractor’s willingness to provide products and services under the terms and conditions of this agreement with any and all exceptions noted and agreed upon. The terms and conditions contained in any participating addendum shall effect only the purchases of procuring agencies within the jurisdiction of the participating entity signing the participating addendum. A participating addendum shall have no effect whatsoever on any other participating addendum or the scope of this agreement. One signed and one electronic copy of each participating addendum shall be filed with the agreement administrator within five (5) days after execution.

“Participating Entity” means WSCA member state, a governmental entity within a WSCA member state or other authorized state or governmental entity that chooses to purchase products and services under the terms of this agreement by executing a participating addendum.

“Price Agreement” means a indefinite quantity contract which requires the contractor to furnish products or services to a procuring agency which issues a valid purchase order.

“Procuring agency” means any New Mexico or participating state agency or local public body. State agency means department, commission, council, board, committee, institution, legislative body, agency, government corporation, or educational institution. Local public body means every political subdivision of the state and the agencies, instrumentalities and institutions thereof including all cities, counties, courts and public schools.

“Products” refers to equipment, software and documentation or any other item furnished under this agreement but not to services.

“Purchase Order” means an electronic or paper document issued by the procuring agency which directs the contractor to deliver products or services pursuant to this agreement.

**(Delete the following definition if not applicable)**

“Servicing Subcontractors” refers to contractor authorized subcontractors who may be assigned by the procuring agency or contractor to service the products listed in a purchase order. Servicing contractors must be certified by contractor to service the products. Participating entities may select and designate a list of servicing subcontractors from a list of potential servicing subcontractors who are otherwise certified to perform services in a given geographic region. The list of selected servicing subcontractors must appear in the participating addendum.

“Services” refers to maintenance services related to products offered or supplied. All forms of application development services and other professional services are beyond the scope of this agreement and may not be procured under the terms of this agreement.

“Software” refers to general purpose software products preloaded on equipment or listed separately in the ESS. The term “Software” applies to all parts of software, including new releases, updates, and modifications of software. For software, the term “purchase” means “license”.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. Scope of Work

The contractor shall deliver computing system products and services to procuring agencies in accordance with the terms of this agreement. This Agreement is a “price agreement”. Accordingly, the contractor shall provide products or services only upon the issuance and acceptance by contractor of valid “purchase orders”. Purchase orders may be issued to purchase the license for software or to purchase or lease products listed on the contractor’s ESS. A procuring agency may purchase any quantity of product or service listed in the contractor’s ESS at the prices stated therein. For large orders, contractor and procuring agency may negotiate quantity price discounts below the ESS price(s) for a given purchase order. Contractor may offer authorized educational institutions educational price discounts that result in prices below the ESS listed prices. Procuring agencies are requested to designate an authorized servicing contractor or certified education partner for each purchase order.

3. Title Passage

Title to equipment shall pass to the procuring agency upon acceptance.

4. Quantity Guarantee

This agreement is not an exclusive agreement. Procuring agencies may obtain computing system products and services from other sources during the agreement term. The NMSPA and WSCA make no express or implied warranties whatsoever that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of products or services will be procured.

5. Order of Precedence

Each purchase order that is accepted by the contractor will become a part of the agreement as to the products and services listed on the purchase order only; no additional terms or conditions will be added to this agreement as the result of acceptance of a purchase order. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. the terms and condition of this agreement;
- B. exhibits to this agreement;
- C. executed participating addendum(s);
- D. the list of products and services contained in the purchase order;
- E. the request for proposals document; and
- F. contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this agreement are subject to the following provisions:

A. Acceptance

A procuring agency shall determine whether all products delivered to it meet the contractor's published specifications. No payment shall be made for any products until the products have been accepted in writing by the procuring agency. Unless otherwise agreed upon between the procuring agency and the contractor, within fifteen (15) days from the date the procuring agency receives written notice from the contractor that payment is requested for services or within fifteen (15) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services.

B. Payment of Invoice

Payments shall be submitted to the contractor at the address shown on the invoice. Payment shall be tendered to the contractor within thirty (30) days of the date of certification. After the thirtieth day from the date that written certification of acceptance is issued, interest shall be paid on the unpaid balance due to the contractor at the rate of one and one-half percent per month. The procuring agency shall make a good-faith effort to pay within thirty (30) days after date of certification.

In the event an order is shipped incomplete (partial), the procuring agency must pay for each shipment as invoiced by the contractor unless the procuring agency has clearly specified "No Partial Shipments" on each purchase order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the contractor's sole responsibility and shall be reported under the contractor's

federal and state tax identification numbers. If a procuring agency is not exempt from sales, gross receipts, or local option taxes for the transaction, the contractor shall be reimbursed by the procuring agency to the extent of any tax liability assessed.

D. Invoices

Invoices shall be submitted to the procuring agency.

7. Agreement Term

The agreement is effective on the date signed by both parties for a term of three (3) calendar years and may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this agreement. In no event shall this agreement remain in effect longer than five (5) years from the effective date.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the NMSPA may terminate this agreement, in whole or in part, by giving the contractor (30) days written notice; provided, however, neither the NMSPA nor a procuring agency has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, contractor may terminate this agreement, in whole or in part, by giving the agreement administrator thirty (30) days written notice. Such termination shall not relieve contractor of warranty or other service obligations incurred under the terms of this agreement.

B. Termination for Cause

Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the

breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Procuring Agency's Rights

In the event the agreement expires or is terminated for any reason, a procuring agency shall retain its rights in all products and services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event the agreement expires or is terminated for any reason, a procuring agency shall pay the contractor all amounts due for products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this agreement and any purchase order issued for multiple years under this agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this agreement or in any purchase order or other document, a procuring agency may terminate its obligations under this agreement, if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The procuring agency's decision as to whether sufficient appropriations are available shall be accepted by the contractor and shall be final and binding.

A procuring agency shall provide sixty (60) days notice, if possible, of its intent to terminate for non-appropriation. Such termination shall relieve the procuring agency, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant purchase order.

10. Shipment and Risk of Loss

A. Contractor shall ship all products F.O.B. destination. Risk of loss or damage to the products shall pass to the procuring agency upon delivery to the procuring agency. Contractor agrees to assist the procuring agency with the processing of claims for such loss or damage and to expedite the processing of claims for such loss or damage and to expedite replacement of lost or damaged products. Destination charges shall be included in the product price on the ESS.

- B. Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency.

Unless otherwise agreed upon by the procuring agency, the contractor is responsible for the pick-up of returned equipment. Software and documentation will be returned via U.S Mail at the expense of the procuring agency.

- C. Unless otherwise arranged between the procuring agency and contractor, all shipments of products shall be by UPS or Federal Express Second Day. **(or other way, specify)**

#### 11. Warranties

- A. The products are covered under the warranties in effect at the time the products are delivered. Exhibit A contains the warranties in effect as of the date of this agreement. The following is a list of the warranties attached as Exhibit A which are the warranties that are in effect as of the date of this agreement:

- a) **(Insert title)**
- b) **(Insert title)**
- c) **(Insert title)**

- B. The parties acknowledge and agree that the warranties described in Exhibit A may be modified by contractor, from time to time, in contractor's sole discretion.

#### 12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The contractor shall defend, at its own expense, the State of New Mexico, participating entities and its agencies against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a procuring agency based upon the contractor's trade secret infringement

relating to any product or service provided under this agreement, the contractor agrees to reimburse the State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the State of New Mexico or participating entity shall:

1. give the contractor prompt written notice of any claim;
  2. allow the contractor to control the defense or settlement of the claim; and
  3. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense:
1. provide a procuring agency the right to continue using the product or service;
  2. replace or modify the product or service so that it becomes non-infringing; or
  3. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency to the extent such modification is the cause of the claim.

13. Price Guarantees

The procuring agencies shall pay the lower of the prices contained in the ESS or an announced promotion price, educational discount price, general price reduction price or large order negotiated price. Only general price reduction price decreases will apply to all subsequent orders accepted by contractor after the date of the issuance of the revised prices. Contractor agrees to maintain ESS product prices in accordance with the volume price discount guarantees filed with the agreement administrator. Prices set forth in the ESS are subject to change without prior notice.

14. Equipment and Service Schedule



The contractor agrees to maintain the ESS in accordance with the following provisions:

- A. The ESS prices for products and services will conform to the guaranteed prices discount levels.
- B. The contractor may change the price of any product or service at any time, based upon list price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period.
- C. The contractor may make product model changes, add new products, product upgrades or services to the ESS at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the parties.
- D. The contractor agrees to delete obsolete and discontinued products from the ESS on a timely basis.
- E. Major product model changes shall be incorporated in the ESS as soon as possible after the announcement. In conjunction therewith or as soon as possible, the parties shall negotiate a price discount level for the new product line as comparable as possible to the price discount level quoted herein for similar products.
- F. The ESS shall be maintained by the contractor on an Internet web site.

15. Product Substitutions

Contractor may make product substitutions either to the internal system components, options or external peripherals as long as the substitute item is the same or better technology at the same or lower price. Delivery order modifications will not be required. The invoice will reflect the actual product shipped NOT the product ordered. To effect administrative savings, procuring agencies are instructed to make payments in accordance with this paragraph without requiring a delivery order modification. The following note will appear on the invoice.

**"In accordance with the Product Substitutions paragraph in the Master Price Agreement, (name of contractor) has substituted a product on this order. The substitution is the same or better technology at the same or lower price."**

16. Technical Support

The contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to procuring agency personnel who wish to obtain competent technical assistance regarding the installation or operation of products supplied by the contractor.

17. Year 2000

The internal mechanisms for handling system time and date functionality in the \_\_\_\_\_-branded systems will not be affected by and will accommodate the rollover to the year 2000, and any date within the architecture range as detailed in the specifications for each product offered on the ESS. \_\_\_\_\_-branded systems will work with and accommodate any compatible software which is itself Year 2000 compliant. However, contractor is not responsible for any accessories, including software provided by third party suppliers, that improperly set, reset, or calculate dates. The procuring agency must satisfy itself that the software it chooses to use on \_\_\_\_\_-branded system is Year 2000 compliant.

18. Product Delivery

Contractor agrees to deliver products to procuring agencies within (insert number of days) (X) days after receipt of a valid purchase order.

19. Impracticality of Performance

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

20. Records and Audit

Contractor agrees to maintain detailed records pertaining to the price of services rendered and products delivered for a period of three years from the date of acceptance of each purchase order. These records shall be subject to inspection by the procuring agency and appropriate governmental authorities with the procuring agency's state. The procuring agency shall have the right to audit billings either before or after payment. Payment under this agreement shall not foreclose the right of the procuring agency to recover excessive or illegal payments.

21. Independent Contractor

The contractor and its agents and employees are independent contractors and are not employees of the State of New Mexico or of any participating entity. The contractor has no authorization, express or implied to bind the State of New Mexico, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the State of New Mexico, WSCA, or participating entity, except as expressly set forth herein. The contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico or participating entity as a result of this agreement.

22. Use of Subcontractors

The contractor may subcontract installation, training, warranty or maintenance services. However, the contractor shall remain solely responsible for the performance of this agreement. All procuring agency payments for products or services shall be made directly to the contractor. If subcontractors are to be used, the name of the authorized subcontractor(s) shall be identified in the applicable participating addendum(s).

23. Indemnification

The contractor shall hold the *State of New Mexico*, participating entities and its agencies and employees harmless and shall indemnify the *State of New Mexico*, participating entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the State of New Mexico, the participating entity, or its employees.

24. Amendments

The agreement shall only be amended by written instrument executed by the parties.

25. Scope of Agreement

This agreement incorporates all of the agreements of the parties concerning the subject matter of this agreement, and all prior agreements have been merged into this agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

26. Invalid Term or Condition

If any term or condition of this agreement shall be held invalid or unenforceable, the remainder of this agreement shall not be affected and shall be valid and enforceable.

27. Enforcement of Agreement

A party's failure to require strict performance of any provision of this agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

28. Web Site Maintenance

Contractor agrees to maintain and support an Internet website for access to the ESS, configuration assistance, product descriptions, product specifications and other aides in accordance with instructions provided by the agreement administrator. In addition, contractor may provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.

29. Equal Opportunity Compliance

The contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which it's primary place of business is located. In accordance with such laws, regulations, and executive orders, the contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this agreement. If the contractor is found to be not in compliance with these requirements during the life of this agreement, the contractor agrees to take appropriate steps to correct these deficiencies.

30. Limitation of Liability

The contractor's liability to a procuring agency for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject the procuring agency's claim. The foregoing limitation does not apply to Paragraphs 12 and 23 of this agreement or to damages resulting from personal injury caused by the contractor's negligence. In no event shall the contractor be liable for any indirect, special or consequential damages arising out of this agreement or the use of the products purchased by the procuring agency hereunder, even if the contractor has been advised of the possibility of such damages.

31. Applicable Law

This agreement shall be governed by the laws of the State of New Mexico. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the agreement administrator to maintain, support and market this agreement. The NMSPA reserves the right to require a change in contractor's then-current primary representative if the assigned representative is not, in the opinion of the NMSPA, serving the needs of the State of New Mexico and the participating entities adequately.

33. Release

The contractor, upon final payment of the amount due under this agreement, releases the NMSPA, State of New Mexico and participating entities its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this agreement. The contractor agrees not to purport to bind the State of New Mexico or any participating entity to any obligation, unless the contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Confidentiality

Any confidential information provided to or developed by the contractor in the performance of this agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the participating entity.

35. Conflict of Interest

The contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this agreement.

36. Replacement Parts

Replacement parts may be refurbished.

37. FCC Certification

The contractor agrees that hardware supplied by the contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination.

38. Site Preparation

A procuring agency shall prepare and maintain its site in accordance with written instructions furnished by the contractor prior to the scheduled delivery date of any equipment or service and shall bear the costs associated with the site preparation.

39. Assignment

The contractor shall not assign nor transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of the NMSPA.

40. Agreement Administrator

The NMSPA shall appoint an agreement administrator whose duties shall include but not be limited to the following:

- A. The administrator shall provide instructions concerning the contents of the contractor's website.
- B. The administrator will facilitate dispute resolution between the contractor and procuring agencies. Unresolved disputes shall be presented to the NMSPA for resolution.
- C. The administrator shall promote the use of the agreement by WSCA members and other participating entities.
- D. The administrator shall advise the NMSPA regarding the contractor's performance under the terms and conditions of the agreement.
- E. The administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The administrator shall periodically verify the product prices in the ESS conform with the contractor's volume price guarantees.

42. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability shall survive the expiration of this agreement. Software licenses, lease, warranty and service agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

43. Lease Agreements

Contractor may lease equipment to procuring agencies in accordance with terms and conditions approved by the appropriate governing authority for the procuring agency's jurisdiction. Such approval shall be indicated in the participating addendum.

44. Succession

This agreement shall be entered into and be binding upon the successors and assigns of the parties.

45. Notification

Either party may give written notice to the other party in accordance with the terms of this paragraph 45. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To NMSPA:

New Mexico State Purchasing Agent  
Purchasing Division  
Joseph M. Montoya State Building, Room 2016  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505

or

P.O. Drawer 26110  
Santa Fe, New Mexico 87502-0110

To Contractor:

**(insert name and address)**

Either party may change its representative or address above by written notice To the other in accordance with the terms of this Paragraph 45. The carrier for mail delivery and notices shall be the agent of the sender.

46. Administration Reporting and Fees

The contractor agrees to provide periodic price agreement utilization reports to the agreement administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The periodic report shall include the gross sales for the period subtotaled by procuring agency name or identifying number, within the procuring agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to one-tenth of one percent (0.0010) of the gross sales for the period.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the contractor's primary representative, suspension of the price agreement or termination of the price agreement for cause.

**(Delete the following paragraph if not applicable)**

47. Servicing Subcontractor

The procuring agency is requested to specify the name and address of a valid servicing subcontractor on each purchase order. Servicing subcontractors shall be authorized dealers of the contractor and approved by the participating entity. The list of approved servicing subcontractors for the entity shall appear on the participating addendum. If the procuring agency fails to specify a servicing subcontractor, the contractor may assign a servicing subcontractor from the list of servicing subcontractors on the appropriate participating addendum. The participating entity may amend the list of servicing subcontractors by providing contractor with a revised participating addendum.

**(Delete the following paragraph if not applicable)**

48. Certified Education Partner



Procuring agencies that qualify for educational products and discounts may assign a certified educational partner to a purchase order. However, contractor may accept and process purchase orders without such assignments.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the New Mexico State Purchasing Agent, below.

State of New Mexico  
State Purchasing Agent

Contractor  
(Contractor Name)

By: \_\_\_\_\_  
Louis T. Higgins  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PARTICIPATING ADDENDUM**  
**WESTERN STATES CONTRACTING ALLIANCE**  
**COMPUTERS DIRECT**  
MASTER PRICE AGREEMENT  
9X-00151

1. Scope: (Briefly describe the jurisdiction of the governmental entity. If the jurisdiction includes all the governmental entities within an entire state, a statement to that effect will suffice)
2. Changes: (Insert specific changes or a statement that no changes are required)
3. Lease Agreements: (Insert a statement whether or not the lease agreement terms and conditions have been approved for use by the governmental entity)
4. Primary Contact: The primary contact individual for this participating addendum is as follows:

**Name**  
**Address**  
**Telephone:**  
**Fax:**  
**E-mail:**
5. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement number: (insert number)
6. Servicing Subcontractors: The following servicing contractors are authorized:  
(Insert servicing subcontractor name)
7. Certified Education Partners: Procuring agencies that qualify for educational products and discounts may assign a certified education partner to a purchase order.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of \_\_\_\_\_  
State Purchasing Agent

Contractor:  
(Contractor Name)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPENDIX C**  
**PRICING CONFIGURATION FORMS**

**SERVER**  
**Price Configuration Form One**  
*MINIMUM REQUIREMENTS*

Processor: Single Intel 450Mhz ***Pentium III*** (or equivalent)  
Memory: 128MB  
Graphics: Integrated 32-bit PCI Graphics w/2MB DRAM  
Hard Drive: 9GB (SCSI)  
Floppy Drive: 3.5" 1.44MB Diskette Drive  
CD -ROM: 13Xmin./32X IDE  
Keyboard: 104+ Keyboard  
Mouse: PS/2 Compatible Mouse  
Warranty: 3 year parts and labor, 3 years On-site

TOTAL CONFIGURATION PRICE \$ \_\_\_\_\_

Cross Reference to ESS Item number (s): \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Offeror Name: \_\_\_\_\_

**DESKTOP**  
**Price Configuration Form Two**  
*MINIMUM REQUIREMENTS*

Processor: Single Intel **450Mhz Pentium III** (or equivalent)

Memory: **64MB**

Monitor: 17" Color Monitor (*dot pitch .28 or less*)

Graphics: Graphics Accelerator (**4MB AGP**)

Hard Drive: **6 GB**

Floppy Drive: 3.5" 1.44MB Diskette Drive

CD -ROM: 13Xmin./32X IDE

Keyboard: 104+ Keyboard

Mouse: PS/2 Compatible Mouse or MS IntelliMouse

Operating System: Microsoft Windows 95 or 98

Warranty: 3 year parts and labor, 1 year On-site

TOTAL CONFIGURATION PRICE \$ \_\_\_\_\_

Cross Reference to ESS Item number(s): \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Offeror Name: \_\_\_\_\_

**LAPTOP**  
**Price Configuration Form Three**  
*MINIMUM REQUIREMENTS*

Processor: Single Intel 366Mhz Pentium II (or equivalent)

Memory: 64MB **66MHz** SDRAM

Screen: 13" or larger Active Matrix Color Display

Graphics: Graphics Accelerator (**2MB GDP**)

Hard Drive: **6 GB**

Floppy Drive: 3.5" 1.44MB Diskette Drive

CD -ROM: 13Xmin./32X IDE

Keyboard: **88+** Keyboard

Operating System: Microsoft Windows 95 or 98

Warranty: 1 year parts and labor, Off-site

TOTAL CONFIGURATION PRICE \$ \_\_\_\_\_

Cross Reference to ESS Item number (s) \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Offeror Name: \_\_\_\_\_

**APPENDIX D**  
**Manufacturer Supplied Computer Equipment**  
**Mandatory Requirements Checklist**  
RFP#90-00151

Yes / No	Complete Acknowledgement of Receipt Form and deliver the completed form to the Procurement Manager by close of business, June 4, 1999.
Yes / No	Offerors shall deliver one original and three (3) identical copies of their proposal to the Procurement Manager to the location specified Section II, Paragraph B6 on or before the closing date and time for receipt of proposals. Two (2) additional, identical copies shall be delivered to each state representative as specified in Section II, Paragraph B6.
Yes / No	The proposal must be organized and indexed as specified in Paragraph III.C.1.
Yes / No	Each proposal must be accompanied by a letter of transmittal. This letter of transmittal MUST: a) identify the submitting organization; b) identify the name and title of the person authorized by the organization to contractually obligate the organization; c) identify the name and title of the person authorized to negotiate the contract on behalf of the organization; d) identify the names, titles, and telephone numbers of persons to be contacted for clarification; e) explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1; f) be signed by the person authorized to contractually obligate the organization; and g) acknowledge receipt of any and all amendments to this RFP.
	<b><i>SPECIFICATIONS</i></b> <b><i>(Mandatory)</i></b>
Yes / No	<u>Product and Services Delivery Overview</u> Offerors must describe their ability to provide computer equipment including related products and support services to the WSCA states and the various governmental entities therein
Yes / No	<u>Reporting</u> Offerors must agree to provide quarterly utilization reports to the agreement Administrator based upon the schedule and minimum content as described in Paragraph 46 of the Price Agreement, Appendix B. Offerors must describe their ability and commitment to meet this requirement and include a sample quarterly report with the proposal.
Yes / No	<u>Electronic Commerce</u> Offerors must describe their ability to provide and maintain, at a minimum, an Internet web site that contains the complete ESS as well as product specifications and options.



Yes / No	<p align="center"><u>Breadth of Offering</u></p> <p>Offerors must, at a minimum, offer a desktop computer equipment configuration Consisting of a central processing unit with direct access storage, a monitor and operating system software.</p> <p>Offerors must provide a summarized list of the models or variations available in each of the primary processing unit categories:</p> <p align="center">Workstations Servers Desktop Laptop Other</p> <p>Offerors must provide a summarized list of the models or variations proposed in each of the following peripheral categories:</p> <p align="center">Printers Monitors Storage Other</p> <p>Offerors must provide, at a minimum, a licensed operating system with each type of processor. Offerors must provide a summarized list of the operating systems that are proposed for each of the following categories of processors:</p> <p align="center">Workstations Servers Desktop Laptop Other</p>
Yes / No	<p align="center"><u>Primary Account Representative</u></p> <p>Offerors must identify by name and location both the proposed primary account representative and the marketing supervisor who will be responsible for the performance of the agreement. A resume must be provided for each named individual.</p>
Yes / No	<p align="center"><u>References</u></p> <p>Offerors must submit three (3) references for current or previous states or other larger governmental (not federal) entities that have or are currently receiving similar products and services to those proposed by the offeror for this procurement. Each reference must include the name of the contact person, address, telephone number and description of products and services provided.</p>
Yes / No	<p align="center"><u>Rollout and Marketing Plan</u></p> <p>Offerors must submit a thorough rollout plan as part of the proposal. At a minimum, the plan must include a description of the rollout materials, a description of the methodology (mailings, meetings, seminars, press releases, personal contacts), proposed dates and location of activities and Gantt chart including tasks to be performed and the time frame for the completion of each task.</p>
Yes / No	<p align="center"><u>Pricing Level and Guarantee</u></p> <p>Offerors must submit with their proposal a narrative that describes the baseline (published) pricing and the initial pricing level discount that is proposed, by product class or category in the ESS. The response to this specification is expected to be in the form of a percentage discount from a published, base line price listing. Offerors must describe the base line pricing and provide information where the baseline pricing may be accessed and verified.</p>

Yes / No	<p style="text-align: center;"><u>Oral Presentation and Demonstration</u></p> <p>If selected as a finalist, offerors agree to provide the Evaluation Committee the opportunity to meet with and question the proposed primary account representative at the oral presentation. The proposed primary account manager is expected to conduct the presentation. Offerors will be required to demonstrate their Internet based reporting and electronic commerce capabilities to the Evaluation Committee. A statement that the offeror agrees to this specification is required.</p>
Yes / No	<p style="text-align: center;"><u>Equipment and Services Schedule</u></p> <p>Offerors must submit with their proposals a complete Equipment and Services Schedule including all the products and services offered for both the government and education procuring agencies at the initial pricing level stated in response to the previous specification.</p>
Yes / No	<p style="text-align: center;"><u>Revised Price Agreement on Diskette</u></p> <p>Offerors must submit with their proposal one 3.5" diskette that contains the proposed revised price agreement terms and conditions. The revised document shall be in Microsoft Word format with the changes highlighted.</p>
Yes / No	<p style="text-align: center;"><u>Cost</u></p> <p>Offerors must complete the Pricing Configuration Form(s) found in appendix C and submit them with their proposal.</p>